



SERVICE and FACILITIES AGREEMENT

Dated as of January 1, 2001

Between

Illinois Gas Company

and

Illinois Real Estate Company

OFFICIAL FILE

ILLINOIS GAS COMPANY 01-0573

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Company 1

1-15-02 CB

SERVICE AND FACILITIES AGREEMENT

THIS SERVICE AND FACILITIES AGREEMENT ("Agreement") is made and entered into as of the 1st Day of January 2001, between Illinois Gas Company, an Illinois corporation ("Illinois Gas"; IGC), and Illinois Real Estate Company ("Illinois Real Estate"; "IRE").

WITNESSETH:

WHEREAS, Illinois Gas Company and Illinois Real Estate Company are related by virtue of common officers and directors, directly or indirectly; and

WHEREAS, Illinois Gas Company and Illinois Real Estate Company believe that the central management of certain services may be efficient and cost effective, and the Parties desire to make provision for these and other transactions between IGC and IRE;

NOW, THEREFORE, in consideration of the foregoing and the mutual covenants contained herein, the Parties hereby agree as follows:

ARTICLE I

Definitions and Interpretation

Section 1.1. Definitions. As used in this Agreement, the following terms shall have the respective meanings set forth below unless the context otherwise requires:

"ICC" means the Illinois Commerce Commission.

"IGC" means Illinois Gas Company.

"IRE" means Illinois Real Estate Company.

"Party" means each, and "Parties" means all of the entities who are from time to time a party to this Agreement.

"Provider" means a Party who has been requested to, and who is able and willing to, furnish facilities, provide services or both to a Requestor under the terms of this Agreement.

"Requestor" means a Party who desires to use facilities, receive services or both, and has requested another Party to provide such services.

Section 1.2. Purpose and Intent; Interpretation. This Agreement shall be interpreted in accordance with the purposes and intent set forth in Sections 1.2(a), 1.2(b) and 1.2(c).

- (a) The purposes and intent of this Agreement are to set forth procedures and policies to govern transactions between IRE and IGC, whether such transactions occur directly or indirectly as the end result of a series of related transactions. It is not intended to govern transactions between IGC and IRE, except to the extent required by the ICC's non-discrimination rules, 83 Ill. Adm. Code 550 (as amended from time to time).
- (b) Notwithstanding anything else in this Agreement, any Party may participate in a transaction (which would otherwise be subject to this Agreement but without regard to otherwise following this Agreement) if such transaction is permitted by any law or regulation provided the transaction meets the requirements of the applicable law or regulation.
- (c) The headings of Articles and Sections contained in this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement. References to Articles, Sections and Exhibits refer to articles, sections and exhibits of this Agreement unless otherwise stated. Words such as "herein", "hereinafter", "hereof", "hereto", "hereby", and "hereunder", and words of like import, unless the context requires otherwise, refer to this Agreement.

ARTICLE II

Use of Services and Facilities

Section 2.1. Services. Upon the terms and subject to the conditions of this Agreement, a Requestor may request a Provider or Providers to provide, and, subject to the provisos at the end of this Section, such Provider or Providers shall provide to such Requestor services, which include, but are not limited to personnel services, including, without limitation, payroll processing.

Provided, however, that a Provider shall have no obligation to provide any of the foregoing to the extent that it is not capable of providing such service (either because such provider does not have personnel capable of providing the requested service or the service is otherwise being used); and provided further, it is understood that a Provider has sole discretion in scheduling the use by a Requestor of services so as to avoid interference with such Provider's operations, subject to the Provider meeting all agreed commitments to the Requestor; and provided further that it is understood that if the provider is IGC, sufficient prudent and necessary review has been undertaken to assure that the transfer will not impair the ability of IGC to deliver

safe, reliable, least cost energy to IGC customers.

Section 2.2 Facilities: IGC will furnish computing equipment and space sufficient enough to allow IRE's employee to perform his duties during non business hours.

ARTICLE III

Charges, Accounting, and Invoicing, Payment

Section 3.1. Charges. Charges for the services under Section 2.1 shall be determined in accordance with Section 4.1(b). By requesting the services, a Requestor shall be deemed to have agreed to pay, and shall pay, to the Provider or Providers the charge determined therefore in accordance with Section 4.1(b).

Section 3.2. Accounting. Each Party shall maintain adequate books and records with respect to the transactions subject to this Agreement and shall establish unique account numbers in its general ledger system which shall be used to record the transactions with the other Party. Each Party shall be responsible for maintaining internal controls to ensure the costs associated with transactions covered by this Agreement are properly allocated and billed in accordance with the terms and provisions of this Agreement.

Section 3.3. Invoicing, Payment. Provider shall invoice the Requestor on a monthly basis as provided in Section 4.1(a). Requestor shall make payment for said invoice within 30 days.

ARTICLE IV

Pricing Methodology

Section 4.1 General Principles. The following general principles shall be used in setting charges for transactions between IGC and IRE:

Services and facilities provided by IGC to IRE shall be charged by the Provider to the Requestor at: (1) \$60.00 per month for the period January 1, 2001 through December 31, 2003. For the period of January 1, 2004 through December 31, 2006, the rate will be \$63.00 per month. (2) In addition, IRE will be charged 2 hours at IGC's G&A Managers hourly rate, per month, as determined annually. (3) IRE will reimburse IGC for the costs of IRE's payroll and associated taxes. (4) IRE will also be assessed a finance charge based upon IGC's month end receivable balance with IRE extended by IGC's interest rate on its long term mortgage. Notwithstanding anything to the contrary, pursuant to 83 Ill. Adm. Code 550.120 (a), transactions between IGC and IRE shall not be allowed to

subsidize IRE.

ARTICLE V

Limitations of Liability

Section 5.1. No Warranties For Facilities or Services. Each Party acknowledges and agrees that any facilities, equipment or capabilities made available, and any services provided, by a Provider to a Requestor hereunder, are so made available or provided WITHOUT ANY WARRANTY (WHETHER EXPRESS, IMPLIED OR STATUTORY AND NOTWITHSTANDING ANY ORAL OR WRITTEN STATEMENT BY A PARTY'S EMPLOYEES, REPRESENTATIVES OR AGENTS TO THE CONTRARY) WHATSOEVER. ALL SUCH WARRANTIES (INCLUDING, WITHOUT LIMITATION, THE WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE) ARE HEREBY DISCLAIMED AND EXCLUDED.

Section 5.2. No Partnership. The Parties acknowledge and agree that this Agreement does not create a partnership between, or a joint venture of, a Party and any other Party. Each Party is an independent contractor and nothing contained in this Agreement shall be construed to constitute any Party as the agent of any other Party.

Section 5.3. No Third Party Beneficiaries. This Agreement is intended for the exclusive benefit of the Parties hereto and is not intended, and shall not be deemed or construed, to create any rights in, or responsibilities or obligations to, third parties.

ARTICLE VI

Termination

Any Party may terminate this Agreement as to it by providing at least 30 days prior written notice to the other Parties of the effective date of such termination. In addition, this Agreement shall terminate as to a Party upon the date that IGC determines that such Party shall no longer be a Party to this Agreement. Any such termination shall not affect the terminating Party's accrued right and obligations under this Agreement arising prior to the effective date of termination or its obligations under Section 8.4.

ARTICLE VII

Confidential Information

Each Party shall treat in confidence all information which it shall have obtained regarding

the other Parties and their respective businesses during the course of the performance of this Agreement. Such information shall not be communicated to any person other than the Parties to this Agreement, except to the extent disclosure of such information is required by a governmental authority. If a Party is required to disclose confidential information to a governmental authority, such Party shall take reasonable steps to make such disclosure confidential under the rules of such governmental authority. Information provided hereunder shall remain the sole property of the Party providing such information. The obligation of a Party to treat such information in confidence shall not apply to any information which (i) is or becomes available to such Party from a source other than the Party providing such information, or (ii) is or becomes available to the public other than as a result of disclosure by such Party or its agents.

ARTICLE VIII

Miscellaneous

Section 8.1. Entire Agreement; Amendments. This Agreement constitutes the sole and entire agreement among the Parties with respect to the subject matter hereof and supersedes all previous agreements, proposals, oral or written, negotiations, representations, commitments and all other communications between some or all of the Parties. This Agreement shall not be amended, modified or supplemented except by a written instrument signed by an authorized representative of each of the Parties hereto.

Section 8.2. Assignment. This Agreement may not be assigned by any Party without the prior written consent of the non-assigning Party.

Section 8.3. Access to Records. During the term of this Agreement, each Party shall have reasonable access to and the right to examine any and all books, documents, papers and records which pertain to services and facilities provided by the other Parties under this Agreement to such Party, and such Party shall provide access to, and the opportunity to examine, all such records which pertain to services and facilities provided to the other Parties under this Agreement by such Party. Each Party shall maintain all such records relating to a given transaction for a period of seven years after the transaction. In addition, during the term of this Agreement and for the same seven year period, the ICC shall have access to all accounts and records of IRE relating to transactions with IGC to the extent, and with the limitations, set forth in Section 7-101 of the Public Utilities Act. Accordingly, IRE shall make available to IGC for the ICC's review pursuant to Section 7-101 such information as the ICC or its staff may deem necessary in order to review and verify both the amounts charged to IGC under this Agreement and the manner in which those amounts were derived.

Section 8.4. Partial Invalidity. Wherever possible, each provision hereof shall be interpreted in such a manner as to be effective and valid under applicable law, but in case any

one or more of the provisions contained herein shall, for any reason, be held to be invalid, illegal or unenforceable in any respect, such provision shall be ineffective to the extent, but only to the extent, of such invalidity, illegality or unenforceability without invalidating the remainder of such invalid, illegal or unenforceable provision or provisions or any other provisions hereof, unless such construction would be unreasonable. In the event that it is determined that the charges for a particular transaction covered by this Agreement were not determined properly for any reason, such determination and/or finding shall not affect the validity of such transaction; provided, however, that if the transaction involved IGC, IRE shall pay to or reimburse IGC, or IGC shall pay to or reimburse IRE, as the case may be, for the difference between the amount that was charged in connection with the transaction and the charge that is determined to be proper under the provisions of Article IV.

Section 8.5. Waiver. Failure by any Party to insist upon strict performance of any term or condition herein shall not be deemed a waiver of any rights or remedies that such party may have against any other Party nor in any way to affect the validity of this Agreement or any part hereof or the right of such Party thereafter to enforce each and every such provision. No waiver of any breach of this Agreement shall be held to constitute a waiver of any other or subsequent breach.

Section 8.6. Governing Law. This Agreement shall be governed by, construed and interpreted pursuant to the laws of the State of Illinois.

IN WITNESS WHEREOF, the Parties have each caused the agreement to be executed by a duly authorized representative as of the day and year first above written.

ILLINOIS GAS COMPANY

ILLINOIS REAL ESTATE COMPANY

By: _____
Roger C. Avery, President

By: _____
Margaret A. Avery, President